color copy of map(s) enclosed in this section of Environmental Analysis

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September 2, 2003

VIA HAND DELIVERY

Ms. Rini Ghosh
Section of Environmental Analysis
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20402-0001

Re: Finance Docket No. 34284 -- Southwest Gulf Railroad Company -- Petition for Exemption from 49 U.S.C. § 10901 to Construct and Operate a Rail Line In Medina County, Texas

Dear Ms. Ghosh:

This will respond to the August 4, 2003 letter from Victoria Rutson requesting various information in connection with the environmental review of the above proposed rail line.

Maintenance or Fueling Facility

1. **Please provide the footprint and location of the maintenance or fueling facility (located on a map).**

   A map showing the approximate proposed location of the facility is attached as Exhibit 1. Note that the maintenance/fueling facility is located off the Edwards Aquifer recharge zone. Further, the map at Exhibit 6 shows the same information, as well as the elevations in the area and the location of the few residences in the general vicinity of the facility. These Exhibits also show the property leased by Vulcan and owned by Vulcan in the vicinity of the quarry.

2. **Please briefly describe proposed fueling and maintenance operations and spill prevention measures and procedures at the facility and how SGR would meet regulatory requirements for the amount of fuel storage it would require. If Vulcan Materials Company (Vulcan) has a general procedure manual used in other facilities, which describes the procedures that would be used at the proposed facility, it would suffice to include a copy of it.**

   The facility will be used to support operations at the quarry, as well as for rail transportation operations. Specifically, the facility will serve as a location for maintenance of plant equipment, as well as for maintenance of any SGR

locomotive and rail equipment. In addition, the facility will serve as a fueling base for plant and rail equipment.

A list of federal and state regulations to which the facility will be subject, e.g., air quality and spill prevention regulations, is submitted herewith as Exhibit 2 (the regulations pertinent to blasting would not apply). A November 2000 chapter drawn from *Local Government Guide to the Texas Natural Resource Conservation Commission* (TNRCC), describing the regulation to which petroleum storage tanks are subject in Texas, is also attached. Note that while the regulatory regime described in that chapter is accurate, the TNRCC has since been replaced by the Texas Commission on Environmental Quality, which now undertakes the same regulatory responsibilities relative to these matters. All tanks will be provided with secondary containments in accordance with 40 CFR Part 112, the EPA rule governing Oil Pollution Prevention. The secondary containment is typically reinforced concrete and is designed to hold the volume of the largest tank, plus the 25-year twenty four-hour storm. All appropriate tanks will be registered as required with the State of Texas. In addition to the EPA rules noted above, a Storm Water Pollution Prevention Plan (SWPPP) prepared for the Texas Pollution Discharge Elimination System (TPDES) Permit that will be procured will address pollution prevention measures for the facility and containment area.

Compliance with these requirements, and the other relevant rules identified on Exhibit 2, would be required for the fuel/maintenance facility independent of the existence or operation of the SGR.

3. **Please indicate whether the facility would be used for rail only or if it would also be used for trucks.**

As noted above, the facility would be used to support quarry operations and thus would be constructed whether or not the SGR railroad is exempted by the STB. The facility could also be used to support truck operations, particularly in the event that the railroad were not built and Vulcan opted to develop a trucking operation for the benefit of the quarry.

4. **If known, please indicate the number of fuel tanks, tank size, and fuel type (vapor pressure) that would be stored at the facility. What would be the maximum amount of fuel stored? How much fuel would be used for the locomotives? If known, please indicate the number of valves, flanges, and other appurtenances. Would the facility be regulated by any permits?**

5. Although the maintenance and fueling area has not been designed, a facility needed to support quarry and rail operations would normally utilize up to three 10,000 gallon diesel tanks along with numerous other containers and tanks ranging in size from 55 gallon to 1,000 gallons for containment of various oils, lubricants, anti-freeze, and used oil for recycling. The relatively modest diesel fuel use for SGR would not warrant a separate containment area. Thus, the facility would be essentially the same size whether or not the SGR line is built since most of the facility and stored fuel would be used to support quarry operations. The number of valves, flanges, and other appurtenances at the facility is not known at this time. The facility would be subject to the relevant permits described above and on Exhibit 2.

6. **Please indicate the general types of materials to be handled at the facility. Would materials be stored in tanks or other containers? If possible, please indicate the amount of material that would be stored.**

   This question has been withdrawn.

7. **Would the facility be built as part of the no-build alternative a well? If so, how would operations at the facility differ?**

   See response to questions 2, 3 and 4, above. The facility would be built even if there were no railroad since it will be used in part to support the fueling and maintenance of plant equipment. In the case of the no-build alternative, the facility likely would be used for plant equipment fueling and maintenance, and be used as a trucking fueling/maintenance facility to support a fleet of trucks delivering materials to the remote rail loading facility. See discussion below under "Switch Yard."

Switch Yard (Remote Rail Loading Facility)

1. **Please provide the footprint and location of the switch yard (located on a map).**

   A map showing where an approximately 100 acre truck-to-rail remote rail loading facility would have to be built if the railroad were not built (no-build alternative) is attached as Exhibit 3. We believe that the most appropriate name for this facility (to avoid confusion with rail switching) is a remote rail loading facility.

2. **Please briefly describe proposed operations at the switch yard that would be built as part of the no-build alternative. Please indicate how operations at the switch yard would comply with Federal and state requirements. Please indicate what spill prevention measures and best management practices**

would be used or provide a general manual from other similar facilities for compliance with Federal and state regulations.

The remote rail loading facility will serve as a facility at which the aggregate would be off-loaded from trucks that originate at the quarry and loaded onto railcars. There would be a modest-sized fueling facility at this location to accommodate fueling of the locomotive used in the rail interchange operations, and this same fueling facility might also serve the needs of the trucks used to transport the aggregate to the remote loading facility in the event that these trucks are not fueled elsewhere, e.g., at the maintenance/fueling facility located at the quarry. The operation of the remote rail loading facility would likely fall under the jurisdiction of certain of the regulations associated with dust/air quality, noise, traffic, water and petroleum products identified in Exhibit 2.

3. **Please indicate the general types of materials to be handled at the switch yard. Would materials be stored in tanks or other containers? Any idea of how much material would be stored?**

The types of materials to be stored at the remote rail loading facility would be diesel fuel and lubricants associated with the relevant equipment. We would anticipate a single 10,000 gallon storage tank. Of course, the aggregate (consisting of crushed limestone) from the quarry also will be handled at the remote rail loading facility, and there will be substantial stockpiles of the aggregate maintained there prior to its loading.

Air Quality

1. **Would the trucks be idling while they are being unloaded or loaded at the quarry and at the switch yard? How long would they idle?**

The trucks will be idling during the loading/unloading process at the quarry and at any remote rail loading facility. We estimate each vehicle will idle for about 10 minutes during the loading process in the vicinity of the quarry and 10 minutes during the unloading process at the remote facility.

2. **Please indicate how many trucks would be needed for deliveries to the local market under the proposed action.**

We estimate approximately 20 to 30 trucks/day. These trucks would operate were the SGR line built or under the no-build alternative.

3. **Please indicate who would be responsible for operating and maintaining the trucks, and whether the trucks would be fueled off site for the action and no-build alternatives.**

Trucks used for local delivery likely will be controlled, operated and fueled by area trucking companies under either the build or no-build alternatives. These trucks could be maintained and fueled at the plaint maintenance and fueling area or at the remote rail loading facility.

See Exhibit 3 for anticipated truck routings to/from the remote rail loading facility under the no-build alternative. It is likely that some road improvements would be required on these routes to accommodate the level of truck traffic under the no-build alternative.

For local market use under either the build or no-build alternatives, trucks would exit from quarry area via CR 351 or CR 353, and proceed onto FM 2676 heading east toward Rio Medina or west toward Hondo, depending on the final destination. Vulcan would consult with County officials about the optimal routing for these trucks.

Vibration

1. **The amount of energy transmitted depends on the smoothness of the steel wheels and rail and the resonance frequencies of the vehicle suspension system and the track support system. Train type, speed, as well as the surface condition and the configuration of the system are also factors. If possible, please provide any specific information on the technical details of the trains that would be used. Information on similar trains used at other Vulcan quarries would suffice.**

Although various options are available to SGR, SGR has not at this time decided specifically on the type of locomotives to be used. SGR anticipates using three locomotives, each supplying approximately 2500-3000 horsepower. SGR intends to use welded rail, with appropriate railbed ballast.

Noise

1. **Please indicate the average number of locomotives per train. Please also indicate the reference sound levels for locomotives, warning horns, freight cars, idling and locomotives, if available.**

As noted above, SGR anticipates using approximately three diesel or diesel/electric locomotives per train, each with about 2500-3000 horsepower.

These may be owned by SGR or by the Class I railroad. No further information on reference sound levels is available at this time, but SGR is further reviewing this issue. SGR commits that its rail operations will comport with FRA noise guidelines at 49 CFR Part 210.

2. **Please indicate the types of trucks that would be used for local markets for the action and no-build alternatives, and for long distance markets, as part of the no-build alternatives, and for long distance markets, as part of the no-build alternative**.

All trucks will comply with all federal and state DOT specifications for the roads being utilized. Typically, local market trucks will consist of tractor trailers (end dumps) carrying approximately 20-23 tons of material and tandem trucks that typically carry between 8-10 tons of material. Similar trucks likely would be used to transport aggregate to a remote rail loading facility under the no-build alternative.

Other Facilities

1. **Please provide a general description and the footprint and location of the rail loading facility (on a map).**

See Exhibit 1 for the description of the rail loading facility that will be located near the quarry site. We anticipate an automated aggregate loading system will be integrated into the facility and used to load railcars. Most of the aggregate will have been washed in the aggregate processing facility. The track layout will consist of either a loading loop or a series of parallel tracks in the same general vicinity as the loading loop depicted on Exhibit 1. The crushing, screening and other plant operations for the quarry would be located near the rail loading facility.

2. **Please provide a general description and the footprint and location of the rail interchange facility (on a map).**

See Exhibit 4. As shown on that Exhibit, this will consist of a single main track with a possible side track approximately one mile long which could be used to temporarily store a loaded or unloaded train. This interchange area would not require fuel storage or material handling areas, as in the no-build alternative since the SGR locomotives will be serviced and maintained in the quarry maintenance/fueling area. In addition, there would be no material handling necessary at this site. The operation would involve the Class I railroad picking up a waiting loaded unit train or leaving an unloaded unit train.

Specific Questions Asked by the Public

1. **Please provide detailed information regarding the level of traffic over the proposed rail line, including projected initial traffic levels, an estimate of when the traffic levels would increase to the projected 2 loaded and 2 empty trains per day, and whether traffic would increase from 2 loaded trains and 2 empty trains per day in the reasonably foreseeable future.**

   SGR anticipates that there will be 1 loaded unit train per day (and 1 unloaded train) following start-up, assuming that the quarry will produce about 3 million tons/year. Depending of course on market conditions this is expected to grow, within an approximately five year period from start-up, to 2 loaded unit trains per day and 2 unloaded trains/day. SGR does not anticipate any more than that number of trains/day within the reasonably foreseeable future.

2. **If possible, please indicate which streams SGR would cross by bridge for the action alternatives and any information regarding these proposed crossings.**

   Exhibit 5 shows, for the preferred alternative, the location of the stream crossings. SGR anticipates that trellis bridges will be constructed as indicated on that Exhibit. An exhibit that shows these stream crossings for the other action alternatives will be submitted shortly.

3. **Please indicate whether SGR would use any chemicals for weed control or for other right-of-way maintenance activities.**

   SGR has not made a final determination as to whether or not it will use chemicals for weed control or other right-of-way maintenance activities. However, SGR plans to maintain the right-of-way in a manner that will minimize fire hazard consistent with industry and local standards.

Sincerely,

David H. Coburn
Attorney for Southwest Gulf Railroad Company

Enclosure

cc: Ms. Jaya Zyman-Ponebshek
Dr. Darrell Brownlow

Exhibit 1

Conceptual Layout of Proposed Vulcan Medina Quarry Area and SGR Rail Facilities

Prepared by Vulcan Materials Company

August 2003

Issue	Agency	Law	Elements
Blasting	-Federal ATF -Federal MSHA -Federal OSHA -City or County Fire Marshall	-Public Law 91-452 -Mine Safety & Health Act -Occupational Safety & Health Act	-Use, storage and sale of explosives -Onsite use, transport & storage-explosives -Onsite use, transport & storage –explosives -Onsite use of explosives, vibration, etc.
Dust	-Federal MSHA -Federal OSHA -Federal EPA -State TCEQ	-Mine Safety & Health Act -Occupational Safety & Health Act -Clean Air Act -Texas Clean Air Act	-Defines Permissible Exposure Limits (PEL) -Dictates sampling -Dictates controls -Regulates stack and fugitive air pollution emissions
Noise	-Federal MSHA -Federal OSHA	- Mine Safety & Health Act -Occupational Safety & Health Act	-Defines action levels (85 dBA) -Requires sampling -Requires hearing conservation program -Requires controls (PPE)
Traffic	-Federal DOT -State DOT	-Highway Transportation Act	-Requires vehicle inspections & maintenance -Defines driver qualifications -Requires driver licensing -Dictates requirements for transporting certain materials -Defines weight limits (per axle) for trucks -Defines speed limits for roads and highways
Water	-Federal EPA -State TCEQ -Regional Edwards Aquifer Authority -Local County Underground Water Conservation District -Local River Authority	-Clean Water Act -Texas Clean Water Act	-Regulates discharges of process water -Regulates discharges of storm water -Regulates above ground storage tanks on recharge and transition zones -Regulates discharges of storm water over recharge zone -Regulates water use from Edwards Aquifer and provides source protection -Regulates ground water activities other than Edwards Aquifer and provides source protection -Regulates surface water use and provides source protection
Petroleum Products	-Federal EPA -State TCEQ -Federal MSHA -Federal OSHA	-Resource Conservation & Recovery ACT -NPDES -Texas Spill Prevention -Mine Safety & Health Act -Occupational Safety & Health Act	-Regulates handling, storage & disposal of petroleum waste -Dictates spill prevention plans -Dictates spill prevention requirements -Dictates storage and handling -Dictates storage and handling -Dictates safety measures
Plants, Wildlife and Wetlands	-Federal Fish and Wildlife -Federal EPA -Federal Army Corp of Engineers -State Parks and Wildlife	Endangered Species Act Clean Water Act	-Regulates protection of endangered and threatened species -Regulates protection of wetlands
Cultural Resources	-Texas Historical Commission		-Protects resources that have been determined eligible for listing with the National Register of Historic Places or formally designated as State Archaeological Landmarks

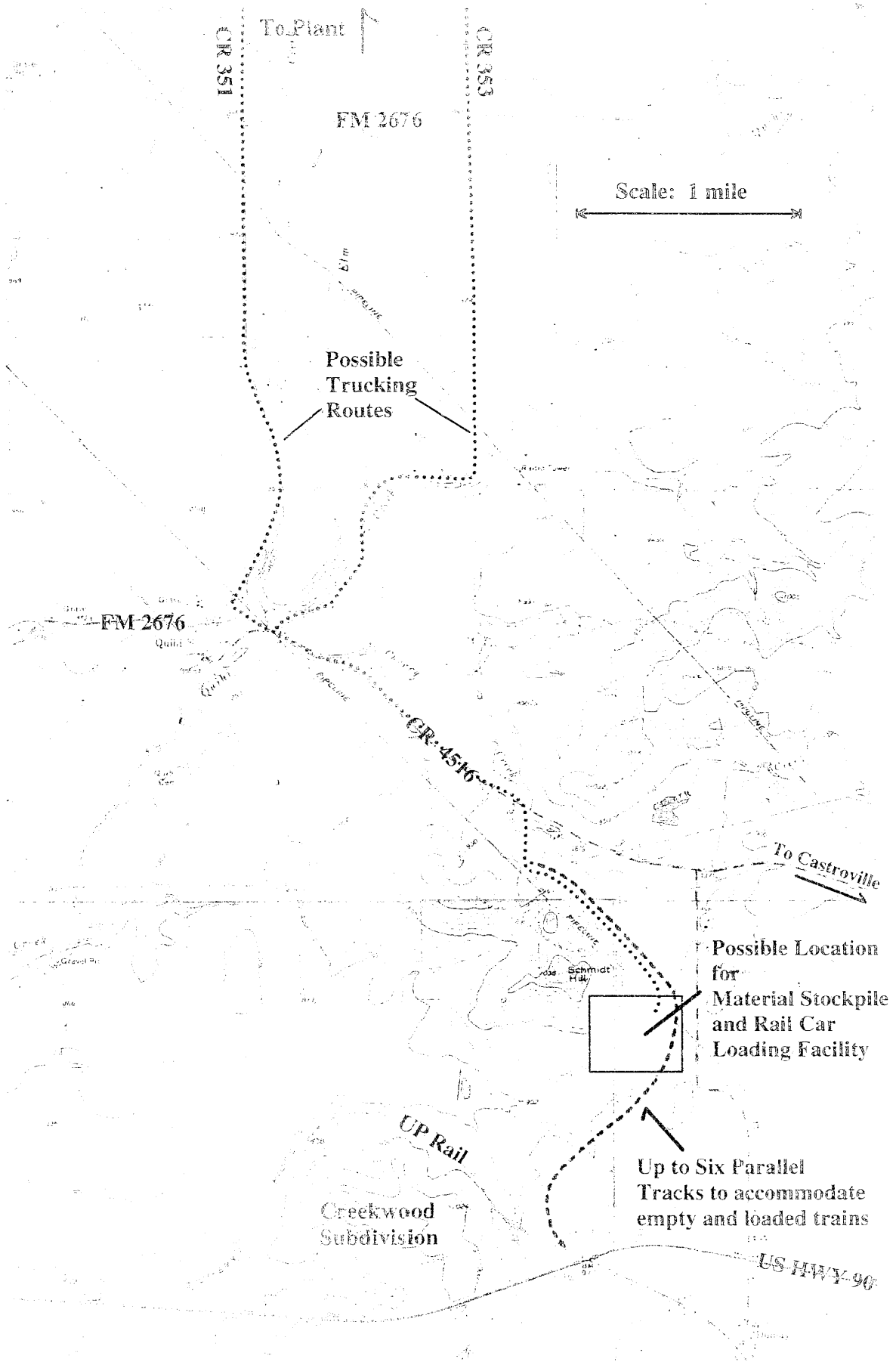


Exhibit 3 No-Build Alternative:
SGR Remote Rail Loading Facility Conceptual Layout

Prepared by Vulcan Materials Company
August 2003

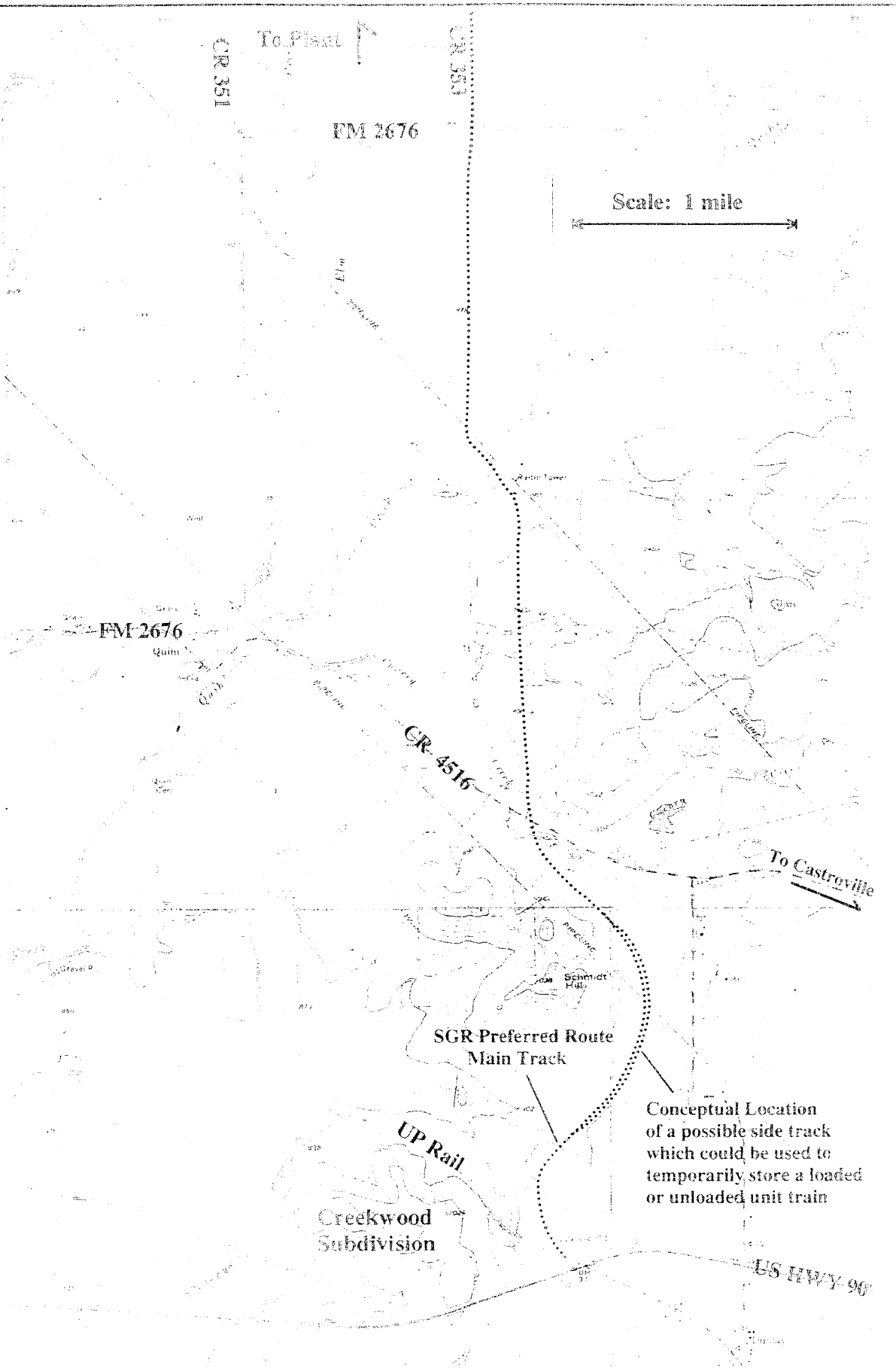


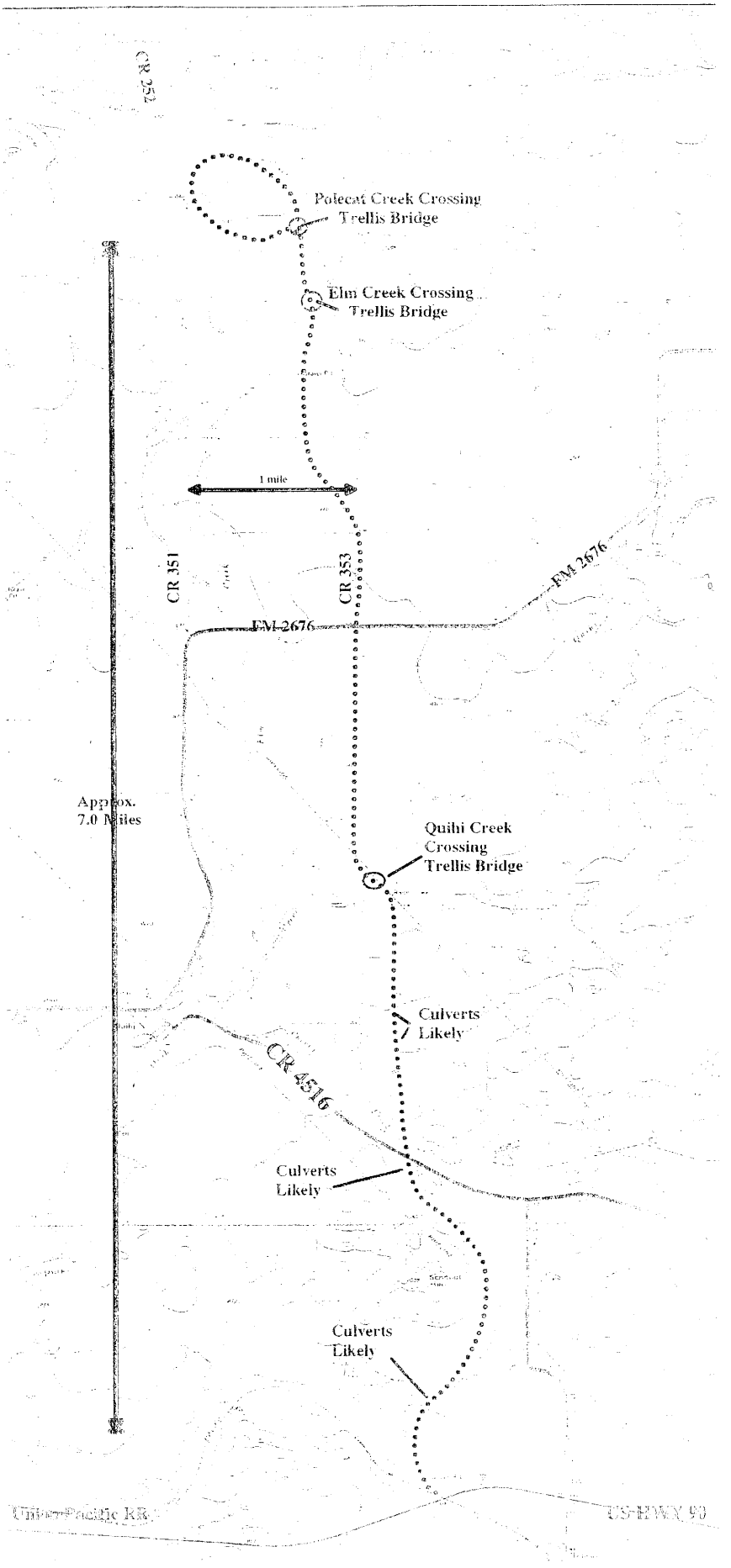
Exhibit 4 Preferred Route:
Proposed SGR - UP Rail Interchange Layout

Prepared by Vulcan
Materials Company
August 2003

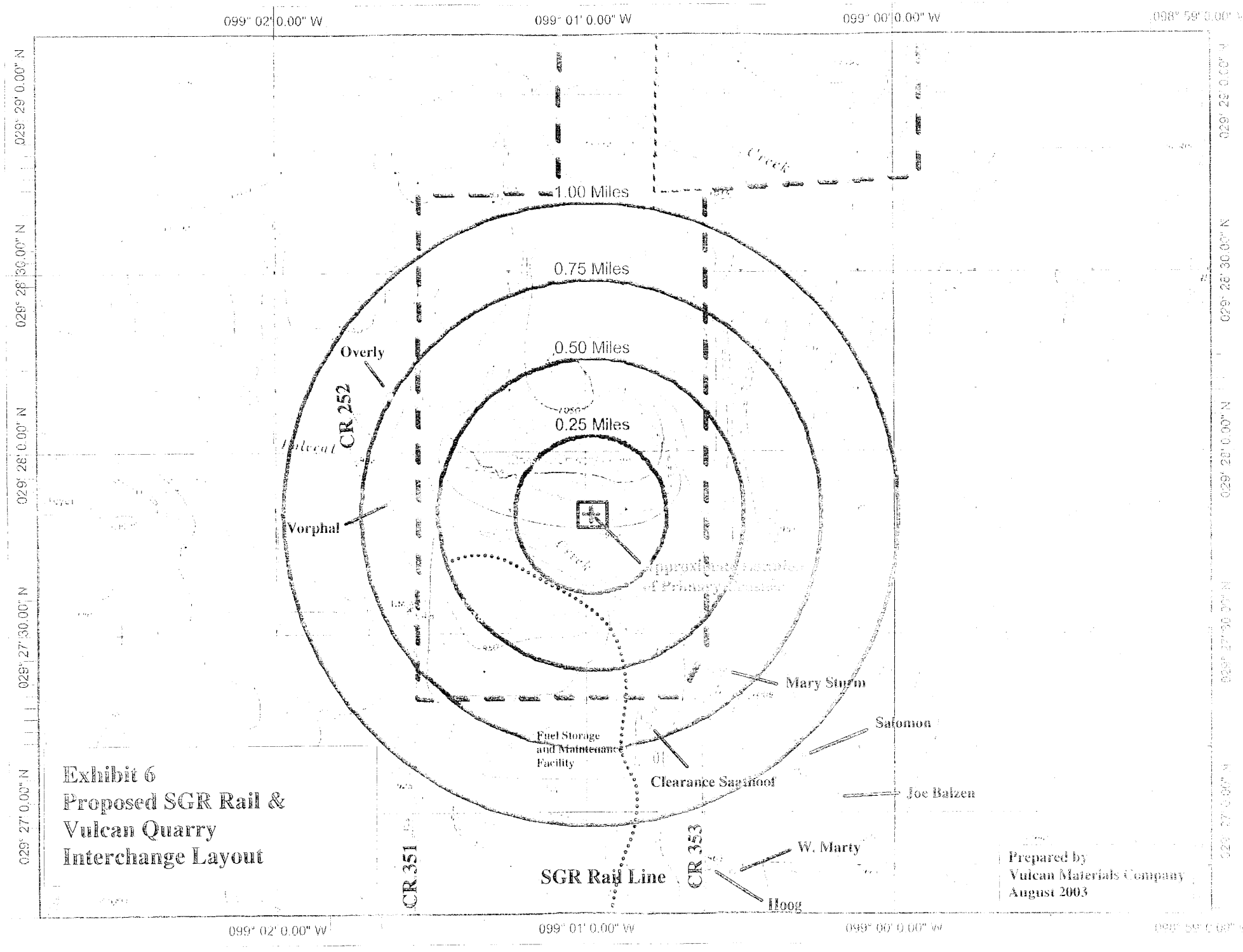
Exhibit 5

SGR Preferred Route Approximate Stream Crossing Locations

Additional culverts may be necessary pursuant to final engineering design recommendations



Prepared by
Vulcan Materials Company
August 2003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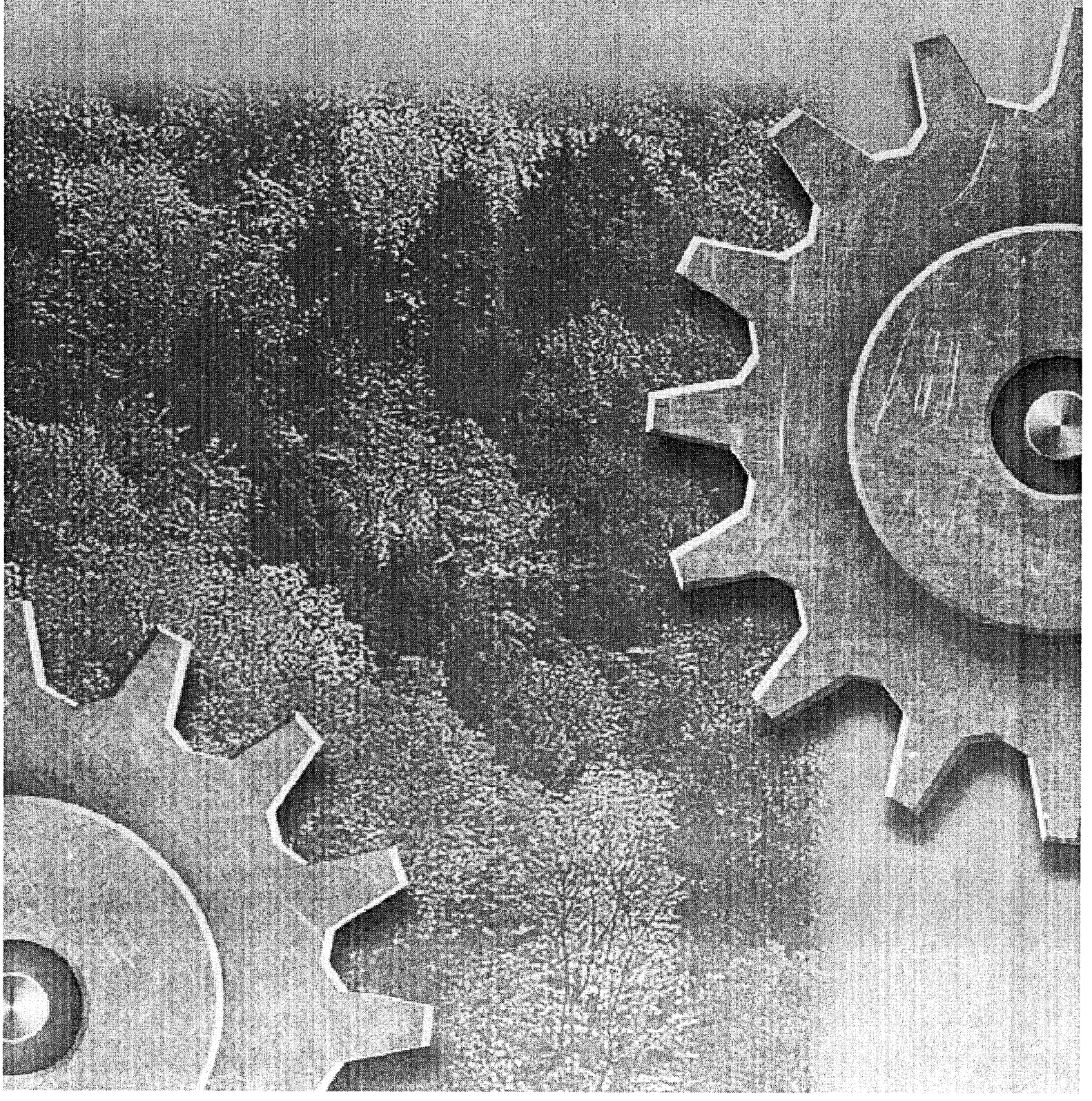
Mary Sturm
Salomon
Fuel Storage
and Maintenance
Facility
Clearance Sagehoof
Joe Balzen
W. Marty
Hoog
CR 351
CR 353
SGR Rail Line
Exhibit 6
Proposed SGR Rail &
Vulcan Quarry
Interchange Layout
Prepared by
Vulcan Materials Company
August 2003

Petroleum Storage Tanks

CHAPTER 8



Program Assistance

Air emissions—For information on air requirements for systems utilized in the treatment of petroleum-contaminated soil or groundwater, contact the Chemical and Coatings program of the Air Permits Division at 512/239-1277.

Automotive waste recycling—For information on automotive waste recycling regulations applicable to the handling and storage of used oil, call 512/239-6683.

Certification—For assistance with certification and licensing for companies or individuals who perform the installation, repair, modification, maintenance, and removal of regulated underground storage tank (UST) systems call 512/239-2191. For information on those who perform remediation activities at leaking petroleum storage tank (LPST) sites, call 512/239-2192.

Construction notifications—For questions on UST construction or aboveground storage tank (AST) installation notifications, contact Petroleum Storage Tank (PST) Technical Services at 512/239-2182.

Emergency spills—For assistance with emergency petroleum or hazardous substance spills, call the Environmental Emergency Hot Line at 1-800-832-8224.

Financial assurance and reimbursement—For assistance with post-payment audits of reimbursement claims from the Petroleum Storage Tank Remediation (PSTR) Fund or financial assurance requirements, contact Administrative Audits and Financial Assurance at 512/239-6239.

Inspections—For information about on-site investigations of regulated UST or AST systems, call the local regional office Field Operations at 512/239-0400.

Petroleum storage tank enforcement issues—For questions on compliance issues, contact Enforcement at 512/239-2545.

Preapproval questions—For information on responsible party preapproval or corrective actions on LPSTs, contact Responsible Party Remediation at 512/239-2200.

Reimbursement—For questions on the reimbursement guidelines, claims for reimbursement from the PSTR Fund, or disputes regarding the review of claims contact Reimbursement at 512/239-2001.

Runoff—To prevent runoff from stored, removed USTs, call 512/239-4563.

Special wastes—For assistance with soils contaminated with nonpetroleum hazardous substances and petroleum-contaminated soils destined for disposal in a landfill, contact Waste Evaluation at 512/239-6832.

Tank registrations—For questions on how to register a tank, fees, certificates, or tank status, contact PST Registration at 512/239-2160.

Technical standards—For questions on technical requirements for the installation, repair, modification, maintenance, or removal of UST systems, and for questions on technical rule variances or construction notification requirements, contact PST Technical Services at 512/239-2182.

Water wells—For information on petroleum UST and public drinking water supply well requirements, call public drinking water program, at 512/239-6020.

Web site—www.tnrcc.state.tx.us

Levels of Authority

FEDERAL

The EPA is authorized to develop and administer a regulatory program for underground storage tanks (USTs) under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The TNRCC has received program approval from the EPA. The EPA retains authority to take enforcement actions in Texas, and has the authority to withdraw program approval (and establish a federal substitute program) if the TNRCC does not effectively administer and enforce the approved state UST program.

EPA Region 6, Dallas, is responsible for overseeing the Spill Prevention Control and Countermeasures Plan (SPCC) and secondary containment, which are required under Title 40 CFR Part 112 for (1) any petroleum UST over 42,000 gallons in capacity, (2) any petroleum AST that has a volume greater than 660 gallons for a single tank, or (3) any facility containing more than one petroleum AST in which the total volume of the ASTs exceeds 1,320 gallons. The EPA Region 6 SPCC Program may be reached at 214/665-2277

STATE

TNRCC

State laws grant the TNRCC the authority to regulate ASTs and USTs. The Texas Water Code Chapter 26, Subchapter I, authorizes the TNRCC to operate a regulatory program for UST and AST systems storing petroleum and hazardous substances and a reimbursement program for corrective action. Subchapter K authorizes the TNRCC to register UST contractors and license UST installers and on-site supervisors. For information on the UST and AST regulations, call the PST program at 512/239-2182. For information related to UST contractors and on-site supervisors, call the installer certification program at 512/239-2191.

Texas Department of Insurance

Local fire marshals should always be contacted on rules and regulations affecting USTs and ASTs at retail stations or at any other site where human health and safety might be a concern. The state Fire Marshal's Office (512/305-7900) may be contacted if the name and number of a local fire marshal is needed or if questions arise with regard to rule interpretation.

Texas General Land Office (GLO)

The GLO Oil Spill Division (512/475-1575) has jurisdiction, under the Texas Oil Spill Response Act of 1991 (OSPRA), over petroleum USTs or ASTs along the coast that present the potential for affecting coastal waters.

Railroad Commission of Texas (RRC)

Tanks, liquid traps, gathering lines, or other facilities used in connection with an activity associated with the exploration, development, or production of oil, gas, or geothermal resources are regulated by the RRC Oil and Gas Division (512/463-6887) and are exempt from TNRCC regulation.

Texas State Comptroller of Public Accounts

The comptroller's Fiscal Management Division (512/463-4903) oversees the fuel surcharge bulk facility payments, which are dedicated to the Petroleum Storage Tank Remediation (PSTR) Fund.

LOCAL

Local officials should always be contacted with regard to any UST or AST system regulated by any of the listed agencies to determine whether local regulations might be stricter than state or federal requirements in given areas. If local regulations are stricter, they prevail over state or federal requirements unless their measures are prohibited by state or federal law.

Program Requirements

TANK REGISTRATIONS

UST Registration

An underground storage tank (UST) is a single tank or any combination of underground tanks and underground connecting pipes used to contain a regulated substance if the volume of the portion of the tank or tank system below the ground exceeds 10 percent of the total volume of the tank system. Regulated substances include petroleum substances (such as gasoline, diesel, new motor oil, used oil, and jet fuel), and hazardous substances (such as dry cleaning fluid, methanol, and ethylene glycol) listed under the Comprehensive Environmental Response Compensation and Liabilities Act (CERCLA) Chapter 101(14).

Owners of certain USTs existing on or after September 1, 1987, are required to register their tanks with the TNRCC unless they were removed from the ground before May 8, 1986, or they were emptied and filled in place with solid inert material on or before January 1, 1974. Tanks that are just empty or unused still must be registered.

UST registration is not required for:

- tanks containing petroleum substances that are not liquid at standard temperature (32° F) and pressure (1 atm);
- farm or residential tanks with a capacity of 1,100 gallons or less;
- heating oil tanks;
- septic tanks;
- flow-through process tanks;
- sumps with a capacity less than 110 gallons;
- hydraulic lifts (but they remain subject to release reporting and cleanup action).

AST Registration

Some aboveground storage tanks (ASTs) must also be registered. Regulated ASTs include those with a capacity greater than 1,100 gallons that store petroleum *products* that are capable of being used as a motor fuel, including gasoline, diesel, kerosene, gasohol, aviation gasoline, and distillate fuel oil. Registration is not required for ASTs containing petroleum substances such as new motor oil and used oil, nor is registration required for ASTs containing jet fuel.

Registration Forms

To register a tank, request either a TNRCC UST Registration Form (form TNRCC-0724) or a TNRCC AST Registration Form (form TNRCC-0659) from PST Registration at 512/239-2160, or download the forms from our Web site. These forms are also used to amend registered tank information when a tank's status changes. Tank owners must submit an amended registration form, signed and dated, within 30 days of any change.

Compliance Self-Certification

At the time of publication, TNRCC was promulgating rules to require compliance self-certification and to change some tank registration requirements to implement legislation that went into effect September 1, 1999. One proposed change would make tank operators, as well as tank owners, liable for tank registration requirements. The new form will be a combined tank registration and compliance self-certification form. Call PST registration staff at 512/239-2160 for current information and forms.

Registration Response Times

The following are general TNRCC response time frames for standard registration activities or requests for assistance:

- New facilities are registered within two days of receipt.
- Registration certificates are issued four to five weeks after registration. (Under the proposed rules, this will be replaced by a delivery certificate, specifying that a tank has been registered and certified as compliant by the owner or operator.)

- Amendments to registrations are processed as soon as possible, but can take as long as three months, depending on workloads (most forms are processed within three weeks of receipt).
- Fees are invoiced annually. Most owners will receive an invoice the first of each fiscal year, and supplemental billings may occur as often as once a month afterward.
- Phone calls are returned within 24 hours.
- Requests for information by phone usually receive same-day service. If a records search is required, the response may take a few days.

OTHER REQUIREMENTS

Technical Requirements

PST Technical Services advocates the proper design of new UST systems and the proper retrofit of existing ones by responding to verbal and written requests for technical assistance from UST owners, related industry, TNRCC staff, and other state, federal, and local governmental entities. Technical Services also performs these functions:

- reviews and approves or denies requests for variances from the technical requirements of the rules;
- processes, files, and tracks all notifications of UST and AST construction; and
- receives, files, and tracks documentation related to other activities (such as compliance evaluation inspections) at UST systems that are not leaking petroleum storage tank (LPST) sites.

For more information, go to the TNRCC Web site and use the Index to select "Petroleum Storage Tanks."

Financial Assurance

Facilities with petroleum product USTs must have financial assurance, such as pollution insurance, as detailed in agency regulations. Failure to have and maintain proper financial assurance may subject the owner of a tank to administrative and civil penalties, risk of court-ordered closure of the tank system, and possible criminal prosecution. For assistance with financial assurance requirements, contact Financial Assurance at 512/239-6239.

Air and Water Regulations

In addition to the storage tank requirements noted above, the removal or installation of a storage tank must also be evaluated for any impact on air quality. No action can legally result in a condition of nuisance smoke, odor, dust or aerosol; cause a traffic hazard; or contribute to a condition of air pollution. Reports of or complaints about nuisance conditions should be made to your TNRCC regional office.

There may also be specific air or water regulations that affect the operation, installation, or removal of a PST. For information on air regulations, contact New Source Permits at 512/239-1240.

Spills

Regulations for spills from USTs and ASTs are outlined in 30 TAC Section 334.75, Reporting and Cleanup of Surface Spills and Overfills. Owners and operators of UST systems must contain and immediately clean up a spill or overfill, report the event to the TNRCC within 24 hours, and begin corrective action in accordance with 30 TAC Sections 334.76–34.81.

Spills include:

- any spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons, or that causes a sheen on nearby surface water; and,
- any spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR Part 302).

Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons, or a spill or overfill of a hazardous substance that is less than the reportable quantity under CERCLA. If cleanup of

these small spills or overfills cannot be accomplished within 24 hours, owners and operators must immediately notify the TNRCC.

For petroleum spills that either exceed 25 gallons or cause a sheen on nearby surface water, or for hazardous substance spills that exceed CERCLA reportable quantities, owners and operators must:

- contain and immediately clean up the spill or overfill;
- notify the TNRCC within 24 hours of the spill/overfill occurrence; and
- begin corrective action steps required by TNRCC rule.

Spills related to petroleum or hazardous substance USTs or ASTs that are exempt or excluded from regulation under the PST Program are regulated under Title 30 TAC, Chapter 327, Spill Prevention and Control, and must still be reported in accordance with the requirements of that chapter to the TNRCC's Emergency Response Unit at 512/239-2507 (emergency 800-832-8224) under the requirements of Chapter 327 of TNRCC rules.

See the *Small Business Handbook for Spill Response* (TNRCC publication RG-285) if you need more information about Chapter 327 reporting requirements.

FEES AND REIMBURSEMENT

Fees

The Texas Water Code (TWC Chapter 26 Subchapter I) authorizes the TNRCC to assess annual storage tank contractor, tank installer, and tank ownership fees, which are deposited in the Storage Tank Fund. Revenue from this fund:

- supports corrective actions on eligible leaking petroleum storage tanks (LPSTs);
- provides matching funds for grants and contracts under Subchapter I; and
- pays administrative, inspection, enforcement and other costs associated with carrying out the duties and purposes of Subchapter I.

Reimbursement

The Petroleum Storage Tank Remediation Fund covers eligible expenses of corrective action taken in response to a release of:

- petroleum products from a PST;
- hydraulic fluid from a hydraulic lift system located at a vehicle service and fueling facility; or
- spent oil from spent oil tanks located at a vehicle service and fueling facility, provided that the tank is also subject to regulation under 30 TAC Subchapter D (see Sections 334.71— 334.85).

Eligibility

In order to be eligible for this program, an owner or operator must meet the following criteria:

- They must own or operate a regulated PST system.
- They must have reported releases to the TNRCC by December 22, 1998. The TNRCC must also have confirmed those releases before December 22, 1998.
- They must have registered their tanks with the TNRCC by December 31, 1995, unless the tank was unknown and was discovered while upgrading, during a site assessment, or during construction in the right-of-way, or was unknown and was not indicated by the title search and previous use of the property. (Tanks installed after December 1, 1995, must have been registered within 30 days of their completion.)
- They must have paid all annual tank fees since September 1, 1987.
- All corrective actions and costs must be approved in writing by the TNRCC. Reimbursement claims for corrective action taken without written pre-approval will be processed after all claims for pre-approved activities have been paid. (Some activities require the seal and supervision of a registered and duly licensed professional engineer.)

- The tank must contain a petroleum product (as defined in 30 TAC Chapter 334.322).

Corrective actions for spent oil tanks and hydraulic lift systems are reimbursable if the release meets eligibility requirements similar to those for gasoline or diesel storage tanks. The release must also have occurred at a vehicle service and fueling facility where the system was used in conjunction with and contemporaneously with that facility.

Application Review

The TNRCC must receive the original properly completed application to initiate the reimbursement review process. All applications for reimbursement must be filed by certified mail, return receipt requested; express mail or other overnight delivery service, return receipt requested; or hand delivery to the appropriate offices.

The original application, including all required documentation and any overdue fees and registration information should be submitted to:

TNRCC Petroleum Storage Tank Program
Reimbursement Section MC-139
PO Box 13087
Austin TX 78711-3087

Upon receipt of an application for reimbursement of corrective action costs, the TNRCC will:

- perform an administrative screening for eligibility;
- conduct a technical review;
- conduct a financial review;
- verify through the TNRCC inspections that the activities to be reimbursed have been performed;
- verify that all tank registration fees are paid.

For more information on reimbursement eligibility, application forms and assistance, contact the Reimbursement staff at 512/239-2001, or go to the TNRCC Web site and use the Index to select "Reimbursements, PST."

Enforcement

INSPECTIONS

The TNRCC conducts inspections of PST facilities to ensure compliance with applicable state requirements. A general description of the inspection process is outlined in Chapter 3. For more information on inspections, contact Field Operations (512/239-0400) or your TNRCC regional office.

Types of Inspections

There are several types of inspections of PST systems. A system may be inspected for any of the following reasons:

- **Imminent endangerment response**—Response to and abatement of impending threats to human health and the environment caused by PSTs.
- **Permanent removal from service**—The observance of the permanent removal from service of a PST system due to removal from the ground, abandonment-in-place, or permanent change in service, and the completion of associated documentation.
- **Tank installation**—The observance of the installation of a PST system and the completion of associated documentation.
- **Tank upgrade**—The observance of various types of PST system upgrades, additions to an existing PST system, or both, and the completion of associated documentation.
- **Compliance evaluation inspection**—A comprehensive or modified compliance evaluation inspection to determine compliance with 30 TAC Chapter 334.
- **Comprehensive evaluation inspection follow-up**—A re-inspection of a facility where violations

were documented and where compliance is being confirmed or further technical assistance is required.

- **Stage II compliance evaluation inspection**—A compliance evaluation inspection in nonattainment areas to determine compliance with Stage II vapor recovery requirements.

Review of Records

The inspector may examine any records, documents, plans, and reports that are required by law. Depending upon the release detection method employed, the inspector may inspect the following records:

- required release detection records;
- record of the last two line leak detector performance tests;
- record of the last two tank and piping tightness tests;
- inventory volume measurements;
- monthly reconciliation of inventory records;
- inventory control records for the past year;
- maintenance records;
- documentation for the calibration and maintenance of automatic gauging systems;
- water well driller's report for each groundwater monitoring well;
- installation records for corrosion protection systems;
- installation records for interstitial monitoring systems.

Visual Inspection

A tour of the site provides the inspector with a better understanding of its operations. The inspector may check the following items, among others:

- any tank to determine whether it is presently in use;
- whether spill and overfill prevention equipment is present and functioning on all USTs;
- whether dispenser pump has a current calibration sticker;
- whether the gauge stick, if it is used, is marked legibly and can determine the product level to 1/8 inch over the full range of the tank's internal height;
- whether the gauge stick is long enough to reach the tank bottom, and has ends that are flat, not worn down;
- whether any other measuring devices are capable of measuring the level of the stored substance to 1/8 inch over the full range of the tank's internal height;
- mechanical and electronic leak detectors;
- automatic tank gauge equipment;
- corrosion-protection system equipment;
- whether an appropriate calibration chart is used to convert product level height to gallons;
- whether the well is clearly marked and secured to prevent unauthorized access;
- whether the well is equipped with a liquid-tight cover;
- whether the well is free of debris.

ENFORCEMENT

The inspection is the first step of several steps in the enforcement process. If violations are noted during an inspection, the TNRCC may:

- give the respondent a **verbal notice** to correct all violations within 14 days, if possible;
- send a **notice of violation** letter (NOV) alleging violations found and request the submittal of a compliance schedule to resolve the violations; or
- begin **formal enforcement** if the violations have not been resolved through a NOV or are significant.

Formal enforcement will usually result in a TNRCC order to correct the violations and pay administrative penalties. This process may include a hearing and frequently involves attorneys for both parties.

Additional information regarding the general enforcement process is provided in Chapter 3. For more detailed information on any aspect of the enforcement process, contact the TNRCC Enforcement Division (512/239-2545) or the Small Business and Local Government Assistance program (1-800-447-2827).

Supplemental Environmental Projects

A Supplemental Environmental Project (SEP) is a project that does something good for the environment in your community. During an enforcement action, a governmental entity may negotiate an agreement to perform a SEP in return for a reduction in the administrative penalty. Doing a SEP does not reduce the out-of-pocket expense, but it does give some choice about where the money goes. For more information, see Chapter 3 or call the SEP coordinator at 512/239-3400.

In Addition

FREQUENTLY ASKED QUESTIONS

Can an application for reimbursement for cleanup activities be submitted at any time?

No. An application should be submitted only after the completion of a preapproved phase of work.

Are costs associated with a tank removal reimbursable if no additional corrective action is required?

No. To be eligible for reimbursement, tank removals must be necessary for the performance of corrective action.

How do I qualify for the state-lead program?

Admission to the state-lead program is limited to responsible parties who are financially unable to perform corrective action, parties who are unwilling to perform necessary corrective action, or sites where the responsible party is unknown. The agency will file suit against "unwilling" responsible parties to recover all allowable costs incurred by the agency concerning the contaminated site. For information about financial review or admission under one of the other criteria, call the site assessment and management staff at 512/239-2120.

Are city and county governmental bodies required to comply with state UST and AST regulations the same as other regulated entities?

Yes.

Local taxing authorities that foreclose on properties with ASTs or USTs containing regulated substances were provided some protection under state legislation effective in 1999.

Did I have to remove my UST from the ground before December 22, 1998?

If a UST system was in compliance with TNRCC rule requirements, it did not have to be removed from service. Any regulated UST system not brought into compliance by December 22, 1998 must have been permanently removed from service by one of these methods:

- removal from the ground, or
- filling in place with solid inert material, or
- change in service to the storage of a nonregulated substance.

Since April 1, 1990, permanent removal from service must be (or have been) performed by a qualified contractor, registered with the TNRCC.

Are there any statewide secondary containment requirements for USTs?

Yes. All tanks installed in Texas and used for nonpetroleum hazardous substance must have had secondary containment on installation. The deadline for adding secondary containment to existing tanks was December 22, 1998.

What kinds of tanks are allowed for new UST systems?

If they meet industry specifications, fiberglass tanks, composite tanks (steel with

fiberglass or polyurethane coating or jacketing), and steel tanks equipped with cathodic protection are all allowed under TNRCC regulations.

What kind of piping is allowed for new UST systems?

If they meet industry standards and TNRCC rule requirements, steel piping with cathodic protection, UL listed fiberglass piping, and UL listed flexible nonmetallic piping are allowed in most areas of the state. However, flexible nonmetallic piping is not allowed over the transition or recharge zones of the Edwards Aquifer.

SIGNIFICANT LAWS AND REGULATIONS

The following is a brief summary of the federal and state laws and regulations relating to PSTs. Please refer to the official rules for specific questions regarding compliance and applicability. See Chapter 2 for more information about obtaining copies of the agency's rules.

Federal Law

RCRA Subchapter I

- Authorizes the EPA, states, and territories to develop and administer comprehensive regulatory programs for UST systems storing petroleum and hazardous substances
- Requires financial assurance for owners of petroleum USTs
- Establishes a $500 million Leaking UST Trust Fund to assist states with the cleanup of releases

Federal Regulation

40 CFR Part 280

- Establishes technical standards and corrective action requirements
- Defines owner and operator requirements for notification, technical standards, tank registration, corrective action, and financial assurance

State Law

Texas Water Code Chapter 26 Subchapter I

- Authorizes a comprehensive regulatory program for UST systems storing petroleum and hazardous substances
- Permits a limited regulatory program for ASTs storing motor-fuel-type petroleum products
- Establishes a limited reimbursement program, with funds to be paid from the PST Remediation Fund
- Authorizes the registration of UST contractors and the licensing of installers and on-site supervisors who install, remove, or repair UST systems
- Authorizes the registration of corrective action specialists and project managers who conduct storage tank remediation projects

State Regulation

30 TAC Chapter 334

- Implements the provisions of federal and state statutes regulating PSTs
- Establishes registration, administrative reporting, and record-keeping requirements for regulated USTs and ASTs
- Sets annual facility fee assessments for in-service USTs and ASTs
- Sets technical standards for new and existing USTs, including standards for tank system design; installation, repair, and removal; tank spill containment and overfill prevention; release detection; and corrosion protection
- Establishes release reporting, site assessment, and corrective action for releases from USTs and ASTs, including procedures for risk-based corrective action determinations
- Establishes regulations regarding the treatment of petroleum-contaminated soil